

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

AUG 12 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0144-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
GEORGE HUMBERTO VEGA,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20042641

Honorable Michael J. Cruikshank, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Barton & Storts, P.C.
By Brick P. Storts, III

Tucson
Attorneys for Petitioner

H O W A R D, Chief Judge.

¶1 Petitioner George Vega was convicted after a jury trial of leaving the scene of an accident, two counts of aggravated driving while under the influence of an

intoxicant (DUI), three counts of endangerment, and criminal damage. Based on a claim of ineffective assistance of counsel raised in a post-trial motion, the trial court vacated the convictions; after a second jury trial Vega was convicted of the same offenses. Those convictions were affirmed by this court on appeal. *State v. Vega*, No. 2 CA-CR 2006-0404 (memorandum decision filed June 26, 2008). Vega subsequently sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., primarily raising claims of ineffective assistance of counsel. The court denied relief and this court denied relief on review. *State v. Vega*, No. 2 CA-CR 2009-0174-PR (memorandum decision filed Nov. 13, 2009). Vega filed a successive notice of and petition for post-conviction relief, and again the court denied relief. Vega seeks review of that order. Absent a clear abuse of discretion, we will not disturb the court's ruling. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 In his petition for review, Vega contends the trial court erred when it rejected his claim that this court's decision in *State v. Aragon*, 221 Ariz. 88, 210 P.3d 1259 (App. 2009), was a significant change in the law applicable to him, entitling him to relief pursuant to Rule 32.1(g), Ariz. R. Crim. P. He asserts that *Aragon* justified the court's reconsideration of its March 2009 denial of his claim, in his initial post-conviction proceeding, that his constitutional rights were violated when the court denied his request to substitute retained counsel for appointed counsel about two weeks before trial. Vega also had challenged the court's denial of substitution of counsel on appeal. We rejected this claim in our June 2008 memorandum decision, issued well before *Aragon* was decided. The court relied on our memorandum decision, in part, in its March 2009

ruling, finding the claim precluded because it had been raised in a Rule 24.2 proceeding and on appeal, but denied the claim on its merits as well.

¶3 In a well-reasoned minute entry, the trial court rejected Vega's claim that *Aragon* constitutes a significant change in the law for purposes of Rule 32.1(g). The court conducted the appropriate inquiry for determining whether an appellate court decision constitutes a ground for relief under the rule, evaluating *Aragon* in light of the proper legal principles.¹ Vega has not persuaded us on review that the court's decision was erroneous, and no purpose would be served by rehashing the court's order in its entirety here. Rather, we adopt the court's ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). The petition for review is granted but relief is denied.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge

¹We note that *Aragon* relied to a large extent on *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006), which was decided before the trial court ruled on the motion for substitution of counsel, our decision on appeal, and the court's initial denial of post-conviction relief.